

Admitted:
California
District of Columbia
New York
Oregon

Law Offices
of
PETER A. CASCIATO
A Professional Corporation

8 California Street Suite 701
San Francisco, CA 94111
Telephone: (415)291-8661
Facsimile: (415)291-8165
VoiceMail: (415)291-8843

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Federal Express

July 26, 1996

William F. Caton, Secretary
Federal Communications Commission
1919 M Street NW Suite 222
Washington, D.C. 20554

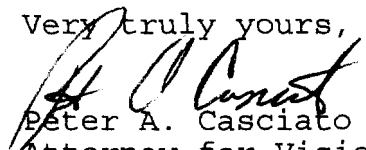
Re: MM Docket No. 96-127, DA 96-789, Kula Hawaii

Dear Mr. Caton:

Enclosed for filing in the above-referenced proceeding are an original and five copies of the comments of Visionary Related Entertainment, Inc. Please return the extra copy, date-stamped in the enclosed self-addressed stamped envelope.

Should you have any questions concerning this matter, please contact the undersigned.

Very truly yours,


Peter A. Casciato
Attorney for Visionary Related
Entertainment, Inc.

enclosures

cc: John Detz, Jr., w/encl.

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

DA 96-879

In the Matter of)
)
Amendment of Section 73.202(b),) MM Docket No. 96-127
Table of Allotments,) RM-8805
FM Broadcast Stations.)
(Kula, Hawaii))

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Visionary Related Entertainment, Inc. ("Visionary"), by its attorney, hereby submits its comments concerning the above-captioned Notice of Proposed Rulemaking, ("NPRM"), DA 96-879, released June 7, 1996.¹

I. Introduction

In the NPRM, Petitioner seeks the allotment of FM Channel 244A to Kula, Hawaii, alleging that this channel would be the first aural transmission service associated with the locality, and that the closest broadcast station is located ten (10) kilometers from Kula. The NPRM requested that the Petitioner provide evidence to demonstrate that Kula is incorporated or contains other indicia of a community. Although the Rand McNally Commercial Atlas and Marketing Guide lists Kula with a population of 2,000 persons, a zip code and a post office, the NPRM requests more information before the Commission can determine if Kula was a community. The NPRM acknowledges, as it must, that the mere facts noted above alone are insufficient to define Kula as a community for allotment purposes. NPRM at fn. 1. As discussed below and as verified by the attached declaration

¹ Visionary Related Entertainment, Inc. is the licensee of the following stations: KAOI FM, Wailuku, HI; KAOI AM, Kihei, HI; KDLX FM, Makawao, HI; KKON AM, Kealahou, HI; KAOY FM, Kealahou, HI; KAOE FM, Hilo, HI; and KGMZ FM, Aiea, HI.

of John Detz, Jr., a resident of Maui County, HI, Kula does not have the indicia of a community allowing it to be allotted the proposed channel.

II. Commission Policy on Definition of Community

Section 307(b) of the Communications Act of 1934 requires the Commission to allot channels among the States and communities. The Commission has defined a "community" to be a geographically identifiable population grouping. Statenville, Georgia, 5 FCC Rcd 2685 (1990); Oak Grove, Florida, 5 FCC Rcd 3774 (1990). The borders need not be precisely ascertainable but the residents of the community need to be commonly regarded as a distinct group and share common interests. Gretna, et. al., Florida, 6 FCC Rcd 633 (1991); Coker, Alabama, 43 RR 2d 190 (1978).

The Commission considers incorporation or a listing in the U.S. Census to be sufficient to demonstrate a locality's status as a community. Statenville, supra at 2685; Oak Grove, supra at 3774. If a community is not incorporated and is not listed in the U.S. Census, it can still be considered a community for purposes of channel allotment if the petitioner can show sufficient social, economic or cultural indicia in the form of local businesses, local churches, political bodies, social organizations or a post office identified as specific to the community and not to a larger region such as the county. Statenville at 2685; Oak Grove, supra at 3774; Gretna, supra at 633.

The Commission requires a definite nexus between the political, social and commercial organizations and the community in question before accepting them as sufficient to prove the existence of a community. Id. Thus, the mere existence of such organizations is an insufficient nexus to determine community status just as the presence of

a post office and a zip code without further indicia is not sufficient to establish community status. Coker, supra at 193; Graham, Washington, 7 FCC Rcd 1676 (1992).

III. Kula Does Not Meet the Indicia for Acceptance as a Community for Allotment Purposes

The facts contained in the attached declaration of John Detz, a resident of Maui County, HI, demonstrates that Kula does not meet the Commission requirements for a community for which a radio station allocation can be granted. As Mr. Detz notes therein, Kula is located in an area commonly known as the "UpCountry" from the Keokea area through Haiku.

The UpCountry area, in general, comprises the recognized communities of Pukalani and Makawao, in which are located virtually all of the community services, government agencies, newspapers, and economic activity utilized by the local population, including people who reside in the area known as Kula. As Mr. Detz states, "Kula" in Hawaiian means "open country," and that best describes the area the petitioner is claiming that it wants to serve. In recent years, houses have been built in the "open country," but virtually no commercial development has been allowed by the County, nor is contemplated by the still debated Maui County UpCountry General Plan. As Mr. Detz further declares, the "Kula Hospital" is not located in "Kula," rather this state run facility is located in Keokea. The "Kula Elementary School" is located in Waiakoa, not Kula.

As the Commission is aware, Kula is unincorporated. Mr. Detz's declaration confirms that it has no newspaper, no municipal services nor governmental units. Virtually all of these services are supplied in Pukalani and Makawao, within the UpCountry area. "Kula's" housing, ranches and meager population physically are dependent upon the

recognizable communities of Pukalani and Makawao due to the fact that one can only enter the "Kula" area through Pukalani and Makawao. "Kula" has no other ingress or egress except through these two recognizable communities.²

The NPRM notes that Petitioner claims that "Kula residents would be heightened by having a local broadcast facility to warn of emergency conditions created by severe weather or other health hazards." This is untrue. Existing KAOI FM translator (licensed to UpCountry) at 96.7 FM and KDLX FM (licensed to Makawao) in cooperation with Maui County Civil Defense, the Maui County Police Department, the Maui County Water Agency, and the U.S. Weather Bureau on Maui already bring such emergency information to the UpCountry area, of which "Kula" is a part. To the best of Mr. Detz's knowledge, there are no Kula emergency situations that would, or could, activate any "local" warnings via a new FM station since there is no local Kula government or public safety agency to activate it.

IV. The Commission Cannot, As A Matter of Law, Grant the Proposed Allocation.

As demonstrated by the facts in the Detz declaration, the Commission cannot, as a matter of law and its own past precedent, allot a channel to the unincorporated area of Kula. For example, in Coker, supra, the Commission rejected the argument that the locality was a community. Coker was unincorporated and not listed in the U.S. Census. The

² Makawao is the community of license to KDLX-FM and Pukalani is the community of license to KMVI-FM, both of which have transmitter sites in Makawao and Keokea. Both stations serve the UpCountry area as part of their service. In fact, virtually all the Maui radio stations cover the UpCountry area to which the petitioner claims to deliver first local service. These stations include, but are not limited to: KAOI FM, KAOI AM, KPMW FM, KDLX FM, KMVI FM, KMVI AM, KNUI AM, KNUI FM, KONI FM, and KUAU AM. See Detz Declaration.

petitioner argued that Coker had a population of about 2,000 persons, a fire department, a post office, a school, several churches and a number of social and civic organizations. The Commission found that the petitioner had failed to connect any of these services specifically with Coker instead of the larger region. Therefore, Coker was not considered a community. Coker, Alabama, 43 RR 2d 190 (1978).

In Gretna, supra, the Commission refused to find Steinhatchee a community for allotment purposes. Steinhatchee was unincorporated and not listed in the U.S. Census. The petitioner argued that Steinhatchee had a population of about 800 persons, a post office with its own zip code, a grade school, and six churches. The Commission found that the petitioner had not created a nexus between these services and the town. Rather, they existed to serve a large section of the county. Therefore, Steinhatchee was not considered to be a community. Gretna, et. al., Florida, 6 FCC Rcd 633 (1991).

In Hannibal, Ohio, 6 FCC Rcd 2144 (1991), the Commission rejected claims that Hannibal was a community. Hannibal was unincorporated and not listed in the U.S. Census. The petitioner argued that Hannibal had a population of about 650 persons, a post office, a zip code, several local businesses, a high school, an elementary school, a bank, a church, a county park and a public pool. The Commission found that the municipal services were provided by the county and the remaining services and businesses were not identified with the community. Therefore, Hannibal was not considered to be a community. Id.

In Jackpot, Nevada, 6 FCC Rcd 4207 (1991), the Commission did not accept Jackpot as a community for allotment purposes. The town was unincorporated and not

listed in the U.S. Census. The petitioner argued that Jackpot had a population of about 2,000 persons, a "town advisory board," which acted as a city council, a Lion's club, several churches, an airport, a municipal swimming pool and a bi-monthly newspaper. The Commission found that the petitioner had not shown the businesses and churches identified themselves specifically with the town. Further, the petitioner did not show that the organizations and newspaper were intended to serve Jackpot as opposed to other areas. Therefore, Jackpot was not considered to be a community. Id.

In Graham, Washington, 7 FCC Rcd 1676 (1992), the Commission rejected Graham as a community sufficient for a channel allotment. Graham was unincorporated and not listed in the U.S. Census. The petitioner argued that Graham had a population of 150 persons, a shopping center, a post office and a zip code. The petitioner also argued that a new manufacturing facility was going to be built in a neighboring area and many of the 5,000 workers would live in Graham. The Commission found that a post office and a zip code are not sufficient to establish community status. Though the 5,000 workers may have moved to the area, the petitioner had failed to prove they would live in Graham as opposed to another community. Therefore, Graham was not considered to be a community. Id.

V. Conclusion

The Commission allots broadcast channels only to recognizable communities. To qualify as a community, a locality must either be incorporated or listed in the U.S. Census. Otherwise, the petitioner seeking allotment must present evidence to the Commission showing that the locality has sufficient indicia of social, economic or cultural organizations or services to qualify as a community.

Kula, Hawaii is neither incorporated nor listed in the U.S. Census. The mere existence of population and a post office in Kula are not sufficient to confer community status. Moreover, the evidence attached hereto demonstrates that Kula does not have sufficient indicia of social, economic or cultural organizations or services to qualify as a community. As a result, the requested allocation should be denied.

Dated: July 26, 1996

Respectfully submitted,



Peter A. Casciato

A Professional Corporation
8 California Street, Suite 701
San Francisco, CA 94111
Telephone: (415) 291-8661
Facsimile: (415) 291-8165

Attorney for Visionary Related
Entertainment, Inc.

Declaration of John Detz, Jr.

I presently reside in Maui County, Hawaii; I am President and General Manager of KAOI-AM & FM & KDLX-FM, licensed to Wailuku, Kihei and Makawao in Maui County. KAOI-FM has operated a translator service for "UpCountry, Maui" for over 2 decades, covering the area UpCountry from the Keokea area through Haiku.

To the best of my knowledge and belief, the UpCountry area in general comprises the recognized communities of Pukalani and Makawao, in which are located virtually all of the community services, government agencies, newspapers, and economic activity utilized by the local population, including people who reside in the area known as Kula. "Kula" in Hawaiian means "open country," and that best describes the area the petitioner is claiming that it wants to serve. In recent years, houses have been built in the "open country", but virtually no commercial development has been allowed by the County, nor is contemplated by the still debated Maui County UpCountry General Plan. The "Kula Hospital" is not located in "Kula", rather this state run facility is located in Keokea. The "Kula Elementary School" is located in Waiakoa.

Kula is unincorporated, has no newspaper, no municipal services or governmental units. Virtually all of these services are supplied in Pukalani and Makawao, within the UpCountry area. "Kula's" housing, ranches, and meager population physically are dependent upon the recognizable communities of Pukalani and Makawao due to the fact that they can only enter the "Kula" area through Pukalani & Makawao. "Kula" has no other ingress or egress except through these two recognizable communities. Makawao is the community of license to KDLX-FM and Pukalani is the community of license to KMVI-FM; both of which have transmitter sites in Makawao and in Keokea. Both stations serve the UpCountry area as part of their service; and in fact virtually all the Maui radio stations cover the UpCountry area that the petitioner claims to deliver first local service. These stations include, but are not limited to:

**KAOI-FM
KAOI-AM
KPMW-FM
KDLX-FM
KMVI-FM
KMVI-AM
KNUI-AM
KNUI-FM
KONI-FM
KUAU-AM**

Petitioner claims that "Kula residents would be heightened by having a local broadcast facility to warn of emergency conditions created by severe weather or other health hazards." KAOI's FM translator (licensed to UpCountry) at 96.7FM & KDLX-FM (licensed to Makawao) in co-operation with Maui County Civil Defense, the Maui County Police Department, the Maui County Water Agency, and the U.S. Weather Bureau on Maui have co-operated with our stations for years in bringing emergency information to the UpCountry area, of which "Kula" is a part (see footnote one). To the best of my knowledge, there are no Kula emergency organizations that would , or could activate any "local" warnings since there is no local Kula government or public safety agency to activate it.

Footnote One:

KAOI Radio and KDLX Radio have co-operated with local home owner organizations UpCountry and in the "Kula" area for years in allowing them access to discuss their concerns and opinions.

I declare under penalty of perjury that the foregoing is true and correct.
Executed at Wailuku, Maui on the 9th day of July, 1996.



John Detz Jr.

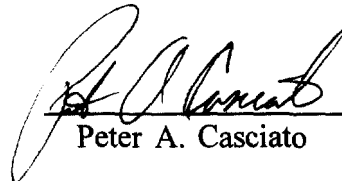
CERTIFICATE OF SERVICE

I, Peter A. Casciato, certify that the following is true and correct:

I am employed in the City and County of San Francisco, California, am over the age of eighteen years, and am not a party to the within entitled action:

My business address is 8 California St., Suite 701, San Francisco, California 94111.

On July 26, 1996, I served the attached Comments by causing true copies thereof, enclosed in sealed envelopes with postage thereon fully prepaid, to be placed in the United States Post Office mail box at San Francisco, California, addressed to the following listed people:



Peter A. Casciato

Nancy Joyner
Federal Communications Commission
Mass Media Bureau
2000 M Street NW Room 565
Washington, DC 20036

Sonia A. Humphrey
c/o Magic City Media, Inc.
1912 Capitol Avenue, Suite 300
Cheyenne, WY 82001

Chief, Data Management
Federal Communications Commission
Mass Media Bureau
1919 M Street NW Room 350
Washington, DC 20554